

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. \*\*\* 20060044855-01

2008 JUN -9 P 12: 23

TO: Department of Market Regulation  
Financial Industry Regulatory Authority ("FINRA").

MARKET REGULATION

RE: **Gilder Gagnon Howe & Co., LLC, Respondent**  
Broker-Dealer  
CRD No. 2002

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, Respondent Gilder Gagnon Howe & Co., LLC ("GILG" or the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

**I.**

**ACCEPTANCE AND CONSENT**

In connection with matter 20060044855, the staff of FINRA's Department of Market Regulation (the "staff") conducted GILG's Order Entry and Trading Examination for 2006, evaluating the firm's compliance with various NASD rules relating to its entry and trading of equity orders and specifically reviewing the items listed in Appendix 1 for trade dates January 17 through 27, 2006 (the "exam review period").

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

**BACKGROUND**

GILG has been a member of FINRA since October 21, 1968 and its registration remains effective. The firm has no relevant disciplinary history:

**FACTS AND VIOLATIVE CONDUCT**

1. During the exam review period, the firm failed to report to the Nasdaq Market Center ("NMC") the correct symbol indicating whether the firm executed 173 transactions in Reportable Securities in a principal or agency capacity. In addition, the firm failed to report to NMC the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for one transaction in a Reportable Security. Finally, the firm incorrectly matched an erroneous trade report on NMC for one transaction in a

Reportable Security. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).

2. The firm failed on 19 occasions to provide written notification disclosing to its customer its correct capacity in the transaction and/or incorrectly disclosed that the price received by the customer was an average price. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
3. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
  - (a) specific identification of the individual(s) responsible for supervision;
  - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
  - (c) the frequency of such reviews; and
  - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimal requirements for adequate written supervisory procedures, in the following subject areas: **Supervisory Systems, Procedures, & Qualifications** (Registration); **Order Handling** (Disclosure of Order Routing Information); **Best Execution** (Three Quote Rule Compliance); **Trade Reporting** (General Trade Reporting, Trade Modifiers, NMC Compliance and Trades Reported on the Firm's Behalf); **Sale Transactions** (Order Marking Requirements, Sales in Threshold Securities and NMC Short Sale Reporting); **Other Trading Rules** (Trading Halts); and **Order Audit Trail System ("OATS")** (Accuracy of Submissions, Rejected Data and Inter-Firm Routed Order ID Matching) [as to the above subject areas (a), (b), (c) and (d)]; and **OATS** (Clock Synchronization) [(d)]. In addition, the firm failed to conduct adequate supervision with regard to its trade reporting to NMC during the exam review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Conduct Rules 2110 and 3010.

**B. The firm also consents to the imposition of the following sanctions:**

A censure; fines totaling \$17,000 (comprised of \$5,000 for the firm's trade reporting violations; \$2,000 for its SEC Rule 10b-10 violations; and \$10,000 for its supervisory violations); and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.3. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to [MarketRegulationComp@finra.org](mailto:MarketRegulationComp@finra.org), providing the following information: (1) a

reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph I.A.3; and (3) the date the revised procedures were implemented.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

The firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The firm has submitted an Election of Payment form showing the method by which it proposes to pay the fines imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanctions imposed in this matter.

## **II.**

### **WAIVER OF PROCEDURAL RIGHTS**

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

### III.

#### OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
  - 1. This AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
  - 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary records;
  - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
  - 4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The firm certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

MAY 27, 2008  
Date

Respondent  
Gilder Gagnon Howe & Co., LLC

By: Walter J. Weadock

Name: WALTER J. WEADOCK

Title: CHIEF COMPLIANCE OFFICER

Reviewed by:

Counsel for Gilder Gagnon Howe & Co., LLC

Accepted by FINRA:

June 26, 2008  
Date

Signed on behalf of the  
Director of ODA, by delegated authority

Thomas R. Gira

Thomas R. Gira  
Executive Vice President  
Department of Market Regulation